

Smt. Chanda Devi and anr. Vs. Dr. Tara Pad Sinha and anr.

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Court : Allahabad

Decided On : Dec-21-1979

Reported in : AIR1980All270

Judge : M.N. Shukla, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 106 and 111; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20; Rent Control Act

Appeal No. : Second Appeal Nos. 1964 and 1965 of 1971

Appellant : Smt. Chanda Devi and anr.

Respondent : Dr. Tara Pad Sinha and anr.

Advocate for Def. : S.N. Verma, Advs.

Advocate for Pet/Ap. : S.C. Asthana and ;R.K. Asthana, Advs.

Disposition : Appeals dismissed

Judgement :

M.N. Shukla, J.

1. The point which has arisen for determination in these appeals is as to whether the tenants Sita Ram (since dead and his heirs brought on record) and Ram

Sewak had incurred forfeiture of their tenancy and had become liable for ejectment under Section 111(g) of the Transfer of Property Act. The material facts may be briefly stated : Dr. Tara Pad Sinha and his wife Smt. Savitri Devi brought two suits against Sita Ram and Ram Sewak respectively with similar allegations. It was stated that they were the owners of house No. 92 situate in Mohalla Sainyer Gate, Jhansi and the defendants aforesaid were tenants in a room in the lower portion and a room in the first floor of the house in question on a monthly rent of Rs. 9/- and 11/- respectively. They were separately tenants of the two rooms since the time of their predecessors-in-title. At the time of the purchase of the house by the present plaintiffs the defendants promised to pay rent regularly at the said rate but they committed default and hence they were served with a notice dated 20th September, 1966 on 21st September, 1966. They did not vacate the house and instead sent a reply to the composite notice aforesaid, alleging, inter alia, that the plaintiffs had no right of ownership as the previous owner and all his heirs did not execute the sale deed in the plaintiffs' favour. The two suits were consolidated by the trial court and were disposed of by a common judgment. They were decreed in the plaintiff's favour and the defendants filed two separate appeals. The plaintiffs also filed a cross-objection but the lower appellate court dismissed both appeal and the cross objection. Aggrieved by the same the defendants have filed two connected appeals, which I find it convenient to dispose of by a common judgment.

2. I have already formulated the question which arises for consideration. The appellants raised two contentions before me. Firstly, it was submitted that on a perusal of the reply of the defendants to the plaintiffs' notice, it would be apparent that there had been no denial of title by the defendants. It is not possible to demur to the proposition that in order to constitute a disclaimer of title for purposes of Section 111(g) of the Transfer of Property Act there must be a direct repudiation of the relationship of landlord and tenant, and the denial must be by clear and unambiguous words and to the knowledge of the landlord. In the present case the defendants in their reply dated 10th October, 1966 to the plaintiffs' notice had clearly stated --

'Lehaza Hum Aap Ko Malik Makaan Manney Ko Tayyar Nahi. Na Hi Aap Hum Say Karaya Talab Karne Wo Makaan Khali Karaney Ke Haqdar Hain.'

Translated into English it would mean--'therefore, we are not prepared to acknowledge you as the owner of the house nor are you entitled to demand rent from us or have the house vacated.'

3. To my mind, there cannot be a more unequivocal and defiant disclaimer of the title of the landlord and this was enough to entail forfeiture of tenancy of the defendants. Both the courts have also an appraisal of evidence recorded a categorical finding that the appellants had knowledge of the transfer of the house in the plaintiffs' favour. In fact, it was admitted by Sita Ram appellant that he came to know of the transfer in favour of the plaintiffs on 18-9-1966. Still, however, on 10-10-1966 he and Ram Sewak in their replies to the notice made the disclaimer which I have extracted above. What is significant is further recital in reply to the notice that the plaintiffs had obtained a registered sale deed of the house in their favour but that had been obtained by practising fraud on the other co-heirs and co-sharers of the property. This averment in reply to the plaintiffs' notice leaves no room for doubt that the defendants were fully aware of the fact that the plaintiffs had become the owners by virtue of a registered sale deed. In the teeth of such ostensible proof of title surely it did not lie in the mouth of the tenants to impute fraud and ulterior motive to the plaintiffs and hold as (if) it were a brief on behalf of the other possible claimants to the property. This is far from being a bona fide enquirv into the real ownership of the property or quest of the person to whom the tenants may legally pay rent and discharge their liability as lessees. The phraseology of their reply to the notice is consistent only with a determined resolve on their part not to treat the plaintiffs as the owners entitled to realise rent from them. This is wholly beyond the province of a lessee and amounts to unabashed disclaimer of the landlord's title. The facts in 0049/1933 : AIR1934 All103 (Madho Lal v. Lal Bahadur Singh) were more or less similar. A rent suit was brought by the landlord and therein the tenant contended that the plaintiff was not the landlord and he was nobody's tenant. It was held that this amounted to disclaimer of the landlord's title and he was entitled to eject the tenant. I have, therefore, no hesitation in coming to the conclusion that the appellants had incurred forfeiture of

tenancy and the provisions of Section 111(g) of the Transfer of Property Act were fully attracted by the facts of the present case.

4. The second ground urged on behalf of the appellants was that at all events the plaintiffs had failed to serve a notice on the appellants stating the ground of forfeiture of tenancy arising from 'the denial of title as a reason for termination of their tenancies and in the absence of such notice the penalty contemplated by Section 111(g) could not be visited upon them. Reliance was placed on a decision of Mehrotra, J., in : AIR1978 All376 (Gyasi Ram v. Ram Chandral wherein it was observed in Paragraph 25-- 'in view of this provision about a notice which has to be given prior to the institution of the notice and which must be based on the existence of one of the three conditions which have been enumerated in Sub-clause (i), (ii) and (iii) of Clause (a) of Section 111. I cannot see how a plaintiff can take advantage of the said provision by a denial of title which is made for the first time by the defendant during the pendency of the suit.' These observations do not amount to saying that the allegation in the notice which terminates the tenancy must be that the lessee had forfeited his tenancy on account of denial of title. In my opinion the implication of the above observation was only this that the tenancy must be determined by a notice prior to the institution of a suit for ejectment on the plea of Section 111(g). If the contrary proposition can be read into that paragraph, I only respectfully say that it was obiter. The point which had arisen for decision in Gyasi Ram's case was only as to whether the denial of tenancy preceded the institution of the suit or not and since in that case the disclaimer had come for the first time in the written statement, it was ruled that the requirements of Section 111(g) were not satisfied. In fact, the last sentence of Clause (g) of Section 111 of the Transfer of Property Act, which is the foundation of the whole edifice of the appellants' argument, itself does not say that the ground for forfeiture of the tenancy on account of the denial of title must be made the basis of the notice. It merely provides that the intention to determine the lease i. e. not to continue the tenancy of the tenant must be communicated to the lessee by actually determining his tenancy by a notice. The underlying principle is obvious. If the tenancy is not terminated it would not be possible to evict the lessee. After all, where the forfeiture is incurred by reason of an act or omission on the part of the lessee, the lessor has an option to take advantage of it or to waive it. Hence, he must so act

evidencing his intention to determine the lease and once the notice has been served terminating the tenancy 'simpliciter', there is no impediment left for the lessor in instituting a suit for ejectment on the plea of Section 111(g). To retain the tenancy and yet sue for ejectment on the basis of disclaimer of title would be a contradiction in terms. This is the only object of giving notice as contemplated by the last sentence of Clause (g) of Section 111 of the Transfer of Property Act. It would be erroneous to read anything more into that provision. That is why series of judicial decisions have taken the view that if the tenancy already stands determined, there is no question of giving a further notice. In fact in (1895) ILR 17 All 45 (Haidari Begum v. Nathu) a Division Bench held -- 'in a suit by a landlord for ejectment of a tenant, no notice of determination of tenancy, under Section 106 of Act No. IV of 1882. is necessary where the defendant has, prior to the suit being brought, denied the plaintiff's title as landlord and that there was any contract of tenancy between them.' That decision was followed in : AIR1959 Pat562 (Gaiadhar v. Khas Mahatadih Colliery Co.) and it was observed-- 'For a suit by a landlord for ejectment of a tenant, no notice of determination of tenancy is necessary where the defendant has, prior to the institution of the suit denied the plaintiff's title as landlord and that there was any contract of tenancy between them.' In AIR 1951 Assam, 70 (Ratneswar v. Mangoli Chutiani) it was held-- 'in any case, in view of the written statement of the defendant denying the landlord's title, the defendant would not be entitled to a notice to quit.' Even without going to that length, it would suffice to say that once the tenancy of the lessee has been duly terminated by a notice, it would be wholly redundant to require a second notice to be given to the lessee expressly mentioning the ground of forfeiture occasioned by denial of title. The point arose in the case of Hari Ram v. Raja Ram, 1975 All LJ 377, where the tenancy of the lessee Smt Sartaji had been terminated by serving a notice to quit under Section 106 of the Transfer of Property Act. Though the ground of forfeiture of tenancy had not been mentioned in that notice for the simple reason that the allegation of denial of title had come for the first time in reply to the plaintiff's notice, yet it was held that once the tenancy had been terminated, the contractual status of Smt. Sartaji came to an end and there was no question of giving a second notice. As observed by Hari Swarup, J.--

'As no fresh contractual tenancy came into existence after the tenancy of Smt. Sartaii was terminated, the question of serving a notice under Section 106 of the Transfer of Property Act on the appellant or of terminating his tenancy in any other manner prescribed under Section 111 of the Transfer of Property Act did not arise.'

5. The legal position, however, is now clinched by another aspect of the case on which my attention has been drawn to a recent ruling of the Supreme Court reported in : [1980]1SCR334 (V, Dhanapal Chettiar v. Yesodai Ammal). It takes note of the impact of the Rent Control Acts enacted in various States on the legal rights of the lessees. The effect of the State Rent Acts is that after termination of the contractual tenancy the lessee continues to be a statutory tenant and the landlord remains a landlord. The tenancy actually terminates on the happening of the event provided for by the Rent Act. As observed by Untwalia, J. in the case of V. Dhanapal Chettiar (supra) in paragraph 9 of the Reports -- 'It will bear repetition to say that under the Transfer of Property Act in order to entitle the landlord to recover possession determination of the lease is necessary as during its continuance he could not recover possession, while under the State Rent Act the landlord becomes entitled to recover possession only on the fulfilment of the rigour of law provided therein, otherwise not. He cannot recover possession merely by determination of tenancy. Nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy.'

6. In view of this protection from eviction enjoyed by tenants under the Rent Acts, giving of a notice of termination of tenancy serves no useful purpose. That is why the ultimate conclusion was categorically stated by the Supreme Court in Dhanapal's case in these words--

'That determination of a lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the Transfer of Property Act.'

7. It follows from the rule of law enunciated above that even assuming that a notice expressly making the allegation of forfeiture of tenancy on the ground of denial of title is obligatory, it has now become redundant in view of the special provisions contained in the Rent Control Act permitting eviction on this ground. Thus, for instance, Section 20 (f) of the Urban Buildings Act (U. P. Act XIII of 1972) permits eviction on the ground of denial of title. Hence, eviction can take place if this ground is established in a suit for eviction and mere serving a notice with that allegation on the tenant cannot secure eviction for the landlord. As observed by Untwalia, J. in Dhanapal's case, : [1980]1SCR334 -- 'even if the lease is determined by a forfeiture under the Transfer of Property Act the tenant continues to be a tenant, that is to say, there is no forfeiture in the eye of the law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Act, not otherwise.' In yet another important passage in the same case the direct bearing of the State Rent Act on Section 111(g) was thus explained--

'Section 111 deals with the question of determination of a lease, and in various Clauses (a) to (h) methods of determination of a lease of immoveable property are provided. Clause (g) deals with the forfeiture of lease under certain circumstances and at the end are added the words 'and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease.' The notice spoken of in Clause (g) is a different kind of notice and even without the State Rent Act different views have been expressed as to whether such a notice in all cases is necessary or not. We only observe here that when the State Rent Acts provide under what circumstances and on what grounds a tenant can be evicted, it does provide that a tenant forfeits his right to continue in occupation of the property and makes himself liable to be evicted on fulfilment of those conditions.'

8. In view of the law laid down by Supreme Court the contention of the appellants that the plaintiff's suit for eviction was bad for want of notice under Section 111(g) of the Transfer of Property Act is completely devoid of force and must be repelled. I think the above principles conclude the present case in favour of the plaintiffs. In the State of Uttar Pradesh the rights of landlords and tenants are at present

governed by U. P. Act XIII of 1972 which contains the provisions of Section 20 (f) to which I have already adverted, permitting eviction of tenants on the ground of denial of title. Similar provision was contained in Section 3 of U. P. Act III of 1947 which was replaced by the present Act. This position is not disputed. Since the eviction of the defendants in the case in hand could be brought about only on proof of the events contemplated by these Rent Acts, which being Special Acts shall override the general provisions of the Transfer of Property Act, giving of a notice under Section 111(g) of the Transfer of Property Act would be a mere surplusage and an exercise in futility. Hence, the plaintiffs' suit could not be thrown out on the ground that no notice under Section 111(g) had been served on the tenants.

9. In the result, these appeals fail and are dismissed with costs.

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